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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/831,797

08/14/2001

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04/19/2007

EXAMINER

DELCOTTO, GREGORY R

ART UNIT

PAPER NUMBER

1751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 09/831,797	Applicant(s) KWETKAT ET AL.	
	Examiner Gregory R. Del Cotto	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on RCE filed 2/5/07.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,8-27 and 32-44 is/are pending in the application.
- 4a) Of the above claim(s) 15-27,32 and 38-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,8-14 and 33-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1. Claims 1-4, 8-27, and 32-44 are pending. Claims 5-7 and 28-31 are pending.

Applicant's response filed 9/6/06 has been entered. Applicant's election of the Gemini surfactant having the formula (A.I) in the response filed 11/12/03 is still in effect

Claims 15-27, 32, and 38-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/12/03.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/6/06 has been entered.

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### **Objections/Rejections Withdrawn**

The following objections/rejections as set forth in the Office action mailed 10/5/04 have been withdrawn:

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The rejection of claims 1-4, 7-14, 28, and 33-37 under 35 U.S.C. 103(a) as being unpatentable over WO 97/40124 or in view of Dubief et al (US 6,074,633) has been withdrawn.

The rejection of claims 1-4, 7-14, 28, and 33-37 under 35 U.S.C. 103(a) as being unpatentable over Baillely et al (US 5,955,416) in view of Deguchi et al (US 5,154,850) has been withdrawn.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

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Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 1-4, 8-14, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/40124 or in view of Hagen et al (US 5,490,955) or Linton ("Acyl Lactylates in Cosmetics", 1984). Note that, Kwetkat et al (US 6,156,721) has been used as a translation of WO 97/40124 since Kwetkat et al is the result of a 371 application which is based on WO 97/40124 and by PCT statute, the 371 application and WO publication must be identical.

Kwetkat et al teach the use of at least 0.1% of anionic Gemini surfactants in detergents, cleaning products, and body care compositions. See Abstract. When Gemini surfactants are employed, there is a significant increase in the efficiency of overall end formulations. This is possible because the anionic Gemini surfactants are markedly more efficient than conventional anionic surfactants in terms, for example, of critical micelle concentration, surface tension, solubility in water, stability to harness solubilizing effect and washing power, and furthermore, owing to their particular structure, are particularly mild to the skin and biodegradable. See column 1, lines 55-69. Additionally, the compositions may include surface active substances which are ampholytes and betaines such as lecithin and solvents for liquid formulations such as alcohols having 1 to 6 carbon atoms. Suitable foam inhibitors include monofattyacid salts which are employed in an amount of 0 to 5% by weight. These compounds preferably contain fatty acids having carbon chain lengths of from 10 to 24 carbon atoms. See column 8, lines 25-45. Additionally, anionic surfactants such as alpha-olefin sulfonates, alcohol ether sulfates, alkyl sulfosuccinates, etc., may be used in the compositions. See column 9, lines 1-20.

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Specifically, Kwetkat et al teach a liquid heavy-duty detergent composition containing 13% by weight of anionic Gemini surfactant, 10.0% by weight coconut fatty acid, etc., with the remainder to weight of water. See column 11, lines 20-45.

However, Kwetkat et al do not teach the use of an anionic surfactant such as an acyl lactylate or a composition containing a Gemini surfactant, acyl lactylate, water, and the other in addition to the other requisite components of the composition of the instant claims.

Hagan et al teach a cleansing composition containing water, from 10 to 30% by weight of one or more C6 to C16 acyl lactylates and from 5 to 25% by weight of one or more co-surfactants, such as acyl taurates, isethionates, sarcosinates, and sulphosuccinates. The cleansing compositions are primarily intended to be used as personal washing products, such as facial wash foams, bath foams, and hair shampoos. See Abstract. It has been unexpectedly discovered that a narrow range of acyl lactylates in combination with specific cosurfactants provide the desired full lathering effects. The compositions are capable of producing a superior lather and accordingly, have great consumer appeal. Also, the compositions are so mild that they can safely be used for cleansing the skin and the hair and other more delicate areas. See column 1, line 60 to column 2, line 5. Additionally, the compositions may include emollients such as PEG-20 corn glycerides, PEG-20 almond glycerides, etc. See column 8, lines 40-65.

Linton teaches that the use of acyl lactylates in cosmetic and personal cleaning compositions act as an emollient for dry skin, provide better curl retention in hair, and have moisturizing properties. See page 52, column 2. In cosmetics, the acyl lactylates

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do remain on the skin after repeated rinsings and this suggests that substantivity, combined with moisture binding, smooth feel, and emulsification properties make acyl lactylates important in formulating cosmetics. See page 54, column 2. In detergent based products such as bubble baths, liquid soaps, facial cleansers, and syndet bars, these materials prevent defatting and leave a silky, talc-like feel on the skin. See page 57, column 2. Specifically, Linton teaches a shampoo compositions containing 18% sodium C14-C16 olefin sulfonate, 3% acyl lactylate, 3% lauramide DEA, 2% PEG 150 distearate, water, etc.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an anionic surfactant such as an acyl lactylate in the cleaning composition taught by Kwetkat et al, with a reasonable expectation of success, because Hagan et al or Linton teach the advantageous properties imparted to a similar personal cleansing composition when using acyl lactylate surfactants.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a Gemini surfactant, acyl lactylate, water, and the other in addition to the other requisite components of the composition of the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Kwetkat et al in combination with Hagan et al or Linton suggest a compositions containing a Gemini surfactant, acyl lactylate, water, and the other in addition to the other requisite components of the composition of the instant claims.



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Claims 1-4, 8-14, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagan et al (US 5,490,955) or Linton ("Acyl Lactylates in Cosmetics", 1984), both in view of WO 97/40124.

Hagan et al and Linton are relied upon as set forth above. However, neither reference teaches the use of Gemini surfactants or a composition containing a Gemini surfactant, acyl lactylate, water, and the other in addition to the other requisite components of the composition of the instant claims.

'124 is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use Gemini surfactant in the cleaning composition taught by Hagan et al or Linton, with a reasonable expectation of success, because '124 teaches the advantageous properties imparted to a similar personal cleansing composition when using Gemini surfactants and further Hagan et al or Linton teach the use of various surfactants in general.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a Gemini surfactant, acyl lactylate, water, and the other in addition to the other requisite components of the composition of the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Hagan et al or Linton, both in combination with '124, suggest a composition containing a Gemini surfactant, acyl lactylate, water, and the other in addition to the other requisite components of the composition of the instant claims.

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### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 8-14, and 33-37 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,710,022 in view of Hagan et al (US 5,490,955) or Linton ("Acyl Lactylates in Cosmetics", 1984).

US 6,710,022 encompasses all the material limitations of the instant claims except for the inclusion of an acyllactylate.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an anionic surfactant such as an acyl lactylate in the cleaning composition claimed by US 6,710,022, with a reasonable expectation of success, because Hagan et al or Linton teach the advantageous properties imparted to a similar personal cleansing composition when using acyl lactylate surfactants.

### ***Response to Arguments***

Note that, Applicant's arguments are moot in view of the new ground(s) of rejection as set forth above.

***Conclusion***

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.


Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory R. Del Cotto  
Primary Examiner  
Art Unit 1751

GRD  
April 14, 2007